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6 Attorneys for Plaintiff,  
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8 **UNITED STATES DISTRICT COURT**

9 **NORTHERN DISTRICT OF CALIFORNIA**

11 MEGAN SHEEHAN

12 Plaintiff,  
 13 v.  
 14 BAY AREA RAPID TRANSIT, NOLAN  
 15 PIANTA, CITY OF OAKLAND, MICHAEL  
 STOLZMAN, and DOES 1-20, inclusive.

16 Defendants.

17 Case No.: C 14-03156 LB

18 **NOTICE OF MOTION AND MOTION FOR  
 19 LEAVE TO FILE THIRD AMENDED  
 20 COMPLAINT**

21 **[FRCP 15(a)(2); FRCP 16]**

22 Date: May 28, 2015  
 Time: 9:30 a.m.  
 Place: Courtroom C, 15<sup>th</sup> Floor  
 Judge: The Honorable Mag. Beeler

23 **NOTICE OF MOTION AND MOTION**

24 **TO ALL PARTIES AND THEIR ATTORNEYS OF RECORD:**

25 **PLEASE TAKE NOTICE THAT** on May 28, 2015 at 9:30 a.m., or as soon thereafter  
 26 as may be heard before Magistrate Judge Laura Beeler, at the United States District Court for the  
 27 Northern District of California, Courtroom C, 15<sup>th</sup> Floor, 450 Golden Gate Avenue, San  
 Francisco, California, Plaintiff Megan Sheehan will and hereby does move this Court for an order  
 under Federal Rule of Civil Procedure ("FRCP") 15(a)(2) granting Sheehan leave to file a Third  
 Amended Complaint to include two newly discovered parties as defendants, the City of Oakland  
 and Michael Stolzman, an officer of the Oakland Police Department who plaintiff recently

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1 discovered participated in the unnecessary take down initiated by defendant Nolan Pianta which  
 2 caused her injuries. To grant leave would also require amending the scheduling order under FRCP  
 3 16 to extend the deadline to amend. This request is made with diligence and in good faith.  
 4

5 The motion for leave to amend is hereby made and based on this Notice of Motion and  
 6 Motion, a Memorandum in support of this motion, the Declaration of Lizabeth N. de Vries, all of  
 7 which are served and filed contemporaneously herewith, as well as the Court files herein, and any  
 8 arguments and/or evidence presented at the time of the hearing.  
 9

10 **SUPPORTING MEMORANDUM IN SUPPORT OF DEFENDANT'S**  
**MOTION FOR LEAVE TO AMEND PLEADING**

11 **FACTS**

12 This is an excessive-force case arising out of a take down at the Santa Rita Jail on March  
 13 17, 2014. Plaintiff filed this lawsuit on July 11, 2014 in a Complaint against BART and the  
 14 County of Alameda, naming DOE defendants as her assailants, efiled as Dkt 1. She then amended  
 15 to include the status of her state-tort claim against the County of Alameda, filing her First  
 16 Amended Complaint as Dkt. 6 on July 25, 2014.  
 17

18 Thereafter, she obtained evidence which depicted how she received her injuries while in  
 19 custody—a video taken by Santa Rita Jail. Plaintiff then engaged in pre-case-management  
 20 discussions with BART and initial discovery to identify the person whom she believed was her  
 21 assailant. She filed a Second Amended Complaint to name Nolan Pianta and dismiss the County  
 22 of Alameda in Dkt. 20, filed on October 29, 2014.  
 23

24 On November 21, 2014, the Court issued a case-management order, Dkt. 27, setting forth  
 25 the litigation schedule, including a deadline of December 22, 2014 to add new parties or amend  
 26 the pleadings. In their initial disclosures, defendants turned over several videos from Oakland  
 27 Police officers' cameras and documents relating to Pianta's report. Pianta's report describes the  
 28 incident as follows, and, does not identify any other officer who participated in the take down:

29 Sheehan had a hair tie that she was placing in her hair. I told her that jail staff would not  
 30 let her into jail with the hair tie. Sheehan removed the hair tie from her hair, turned  
 31 towards me, and threw it at me striking my hat which I was wearing on my head. I said to  
 32 her, "Really?" She turned away from me and began looking through her purse which was  
 33

1 on the counter. I ordered her to stop and I attempted to remove the purse from her reach.  
 2 Once I grabbed the purse, Sheehan grabbed it and attempted to pull it away from me. I  
 3 continually ordered her to "Let go" She did not comply. Sheehan began screaming and  
 4 swearing at me. I grabbed on to Sheehan's left arm and placed her in an arm bar control  
 hold in order to gain compliance. Oakland Police Officer M. Stolzman grabbed the purse  
 and removed it from her grasp.

5 While I had Sheehan in a control hold, she began pulling away from me. I pushed her up  
 6 against the counter in order to gain better control of her. She suddenly turned towards me  
 7 and began violently punching with a closed fist at my face. Her strikes appeared as though  
 8 they were missing my face by inches. I ordered her to get on the ground and she continued  
 9 her assaultive behavior of attempting to strike me in the face. To protect myself from her  
 10 attack and to stop her attack on me, I used an arm bar take down and guided her to the  
 ground. Upon guiding her to the ground she landed on her face and appeared to go  
 unconscious. Moments later blood pooled onto the floor coming from her facial area. I  
 placed her in the recovery position.

11 Nolan Police Report, at pages 2 of 3, **Exhibit A** to de Vries Decl. Nowhere in the materials  
 12 disclosed by the defendants or discovery exchanged prior to the past month has any evidence  
 13 suggests that another officer went hands-on with the plaintiff to cause her take down and injuries.  
 14 Accordingly, plaintiff did not seek to amend her complaint within the deadline set by this Court.

15 After initial disclosures and preliminary written discovery, the plaintiff began taking  
 16 depositions in 2015 and conducted additional discovery.

17 On or about March 27, 2015, defendants disclosed additional evidence to plaintiff which  
 18 was referred to by a BART witness, Sergeant Steve Szopinski, at deposition on April 16, 2015.  
 19 (Szopinski Depo at pp.s 83:6-19, **Exhibit B** to de Vries Declaration). Plaintiff took a recess to  
 20 review some of this newly disclosed evidence. (*Id.* at 90). The videotape of OPD Officer Hight,  
 21 excerpts of which are attached to the proposed Third Amended Complaint, is the most complete  
 22 evidence to depict the take down which caused Sheehan's injuries. Before this video was  
 23 disclosed, plaintiff incorrectly believed that Pianta *alone* caused Sheehan to be thrown to the  
 24 floor, face first. But the Hight video reveals that OPD officer Michael Stolzman held Sheehan's  
 25 right hand back while Pianta threw her to the ground and held her left hand back—preventing her  
 26 from breaking her fall and causing her to get seriously injured.

Counsel put on the deposition record of Szopinski that she intended to add new parties to this litigation. Counsel for BART, Pianta and the witness (all the same person) agreed to adjourn the deposition and stipulate to vacate all discovery deadlines until the new parties could participate in this case. However, defendants' counsel would not stipulate to plaintiff's filing the Third Amended Complaint.

On April 20, 2015, the parties submitted a stipulation to vacate all deadlines and notice that plaintiff would be filing this motion. On April 21, 2015, this Court set a new case-management conference in this matter to address these issues for May 28, 2015. Also on April 21, 2015, the parties participated in an ENE. Plaintiff now files this motion on April 22, 2015 to permit the hearing date to coincide with new conference date to preserve judicial resources.

Plaintiff now seeks leave of this Court to file a Third Amended Complaint to add these two newly discovered parties. A true and correct copy of the proposed pleading is attached as **Exhibit C** to the de Vries Declaration.

## ARGUMENT

Absent a stipulation, Sheehan must leave of court to file this amended pleading. FRCP 15(a)(2). Courts should freely grant leave to amend pleadings to promote the interests of justice. FRCP 15(a)(2); *Martinez v. Newport Beach City*, 125 F.3d 777, 785 (9<sup>th</sup> Cir. 1997). The circumstances justifying denial of leave to amend are limited. *Ynclan v. Department of Air Force*, 943 (F.2d 1388, 1391 (5<sup>th</sup> Cir. 1991). The United States Supreme Court has held that a court may deny leave to amend where there is "undue delay, bad faith or dilatory motive on the part of the movant, repeated failure to cure deficiencies by amendments previously allowed, undue prejudice to the opposing party by virtue of allowance of the amendment, [or] futility of amendment."

*Foman v. Davis*, 371 U.S. 178, 182 (1962). None of those factors are present here. Rather, it is plaintiff who will be prejudiced if she is not able to join these defendants to this action and has to initiate a new matter to pursue her rights as against them.

A party seeking to amend under FRCP 16 must show good cause, diligence, and comply with the local rules if that amendment requires altering the case-management schedule as it does

1 here. Northern District Local Rule 16-2; FED. R. CIV. P. 16(b)(4); *Johnson v. Mammoth*  
 2 *Recreations, Inc.*, 975 F.2d 604, 6-07-10 (9<sup>th</sup> Cir. 1992). The circumstances supporting the  
 3 request are set forth in the factual statement of this motion. Plaintiff did not and could not have  
 4 discovered the existence of a video by an Officer Hight, whose video and identity she did not  
 5 discover until late March 2015. Plaintiff's counsel conferred by email and in person at the ENE  
 6 on April 21, 2015. *See*, Decl. de Vries. As ordered by this Court on April 21, 2015, the parties  
 7 will submit a proposed revised case-management schedule in preparation for the hearing on May  
 8 28, 2015. The parties already participated in an Early Neutral Evaluation, the only form of ADR  
 9 to which defendants agreed, on April 21, 2015. The plaintiff is amenable to participating in other  
 10 forms of ADR with these or the new defendants.

11 Plaintiff does not believe that the other deadlines in the current schedule could be met  
 12 because discovery should not be conducted and therefore completed by May 7, 2015 without all  
 13 necessary parties present and participating if they so choose. Moreover, plaintiff will be prepared  
 14 to try this case early in 2016 at the Court's earliest convenience. Plaintiff requests a case-  
 15 management conference be set once all parties have appeared in this matter to set these new dates.

16 Granting the instant motion will promote the interests of justice. Plaintiff has been diligent  
 17 in seeking this leave and adjudicating the matter in one forum against all defendants. Good cause  
 18 is shown because pursuing all parties in one form complies with California's primary-rights  
 19 doctrine and the prohibition against splitting a cause of action. Permitting this amendment based  
 20 on diligence and good cause will save the parties and this Court time, effort, and expense.

21 **CONCLUSION**

22 For the reasons set forth herein, plaintiff respectfully requests leave to file her Third  
 23 Amended Complaint.

24 Respectfully submitted,  
 25

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27 Dated: April 22, 2015

28 /s/ Lizabeth N. de Vries  
 Lizabeth N. de Vries  
 Attorney for Plaintiff